

RULES OF PROCEDURE OF THE BOARD OF APPEALS

WHEREAS, procedures for the Board of Appeals of Charles County, Maryland, have been previously adopted by the Board on May 23, 2000, and

WHEREAS, it is the intent and desire of the Board of Appeals for Charles County that rules of procedure pursuant to Section 297-409 of the revised and updated Charles County Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals for Charles County, Maryland, this 10th day of Nov 2009, that the following rules of procedure are hereby adopted.

I. **GENERAL.** The Rules of Procedure of the Board of Appeals are supplementary to requirements set forth in the Charles County Code and Charles County Zoning Ordinance, which should be reviewed for additional procedural requirements.

II. **ORGANIZATION.** The members will designate one member to be Chairperson and another person to be Vice-Chairperson on the first meeting day in January each year. The Chairperson will have the duty and responsibility for scheduling of hearings and meetings, and for ruling on preliminary matters of a procedural nature and evidentiary at hearings. The Chairperson may delegate the duty of scheduling of hearings and meetings to the Clerk to the Board of Appeals.

The Office of Planning and Growth Management will be the ex-officio Clerk to the Board of Appeals in all matters, will be the custodian of the record of

proceedings, and will maintain the docket in each case. The Office of Planning and Growth Management will appoint a Clerk to the Board of Appeals, who will be responsible for the recording of proceedings.

The County Attorney is the legal advisor to the Board of Appeals. The County Attorney or a designated Assistant County Attorney will attend the Board of Appeals at all of its meetings, unless excused by the Chairperson.

III. **SESSIONS AND HEARINGS.** The Board of Appeals will hold such sessions and hearings as may, from time to time, be scheduled by the Chairperson or his/her designee.

The Board may conduct such preliminary hearings as are deemed necessary by the Chairperson. The Board of Appeals may meet in a closed session for any reason specified in the Maryland open meetings law, codified at Section 10-501, et. seq. of the State Government Article of the Annotated Code of Maryland, see Attachment A. However, in that regard all hearings shall be held in open public session and no evidence, argument, or other matter shall be received by the Board in a closed session, and no party in interest shall be heard by the Board of Appeals in a closed session. All evidence shall be presented to the Board of Appeals in hearings open to the public. The hearings will be electronically recorded.

IV. **PLACE AND TIME OF HEARINGS.** Board of Appeals hearings will be held in the Charles County Government Building, La Plata, Maryland, except as may be otherwise scheduled by the Chairperson or his/her designee. The parties will be notified of the hearing time and date, in writing, within 60 days of receipt of an application. The Board of Appeals' staff shall attempt to notify Applicants of the

hearing date at least 21 days prior to same. This time period shall not be considered jurisdictional.

V. **RECORD OF HEARINGS.** The Board of Appeals will cause to be prepared an official record of its proceedings in each case, which shall include all testimony and exhibits, but it will not be necessary to transcribe the testimony unless requested for court review, or when requested by any party in interest appearing at the hearing. The party taking the appeal or ordering the record must address such request to the Clerk to the Board, and must either pay the Clerk to the Board or Reporter, in advance, the cost of transcribing the record, or pay such deposit as is required by the Clerk to the Board or Reporter. The Reporter shall certify the accuracy of such transcript.

VI. **PUBLIC ATTENDANCE.** The general public is encouraged and invited to attend Board of Appeals hearings. All persons attending a Board of Appeals hearing must maintain order and refrain from disturbing the orderly process of the hearing. In the event of a disruption, the Chairperson may, in the Chairperson's discretion, clear the hearing room of offending persons, or recess the hearing.

VII. **FORM AND CONTENTS OF ORIGINAL AND RENEWAL APPLICATIONS**

A. The form and contents of applications shall be as prescribed by the Board of Appeals. Application forms will be made available to the public through the Office of Planning and Growth Management. It is the responsibility of the Office of Planning and Growth Management to ensure that such applications are adequately completed by the Petitioner. The required copies of a recorded plat, 18" by 24" in size, showing: the land for which the special exception or variance is

sought, outlined in red, the bordering properties, streets and street names; lot and block designations, if any; north point and scale; site location or vicinity map; adjacent property owners; and any other pertinent information such as, rendered drawings of building elevations and computer modeling and simulations. If no recorded plat exists, the deed to the property shall be submitted. In addition, the Applicant shall submit the required copies of a site plan, 18" by 24" in size, showing: ways of ingress and egress; proposed screening and buffer zones; existing and/or proposed streets; and parking configuration.

B. Renewal applications require the same form and contents as original applications. A renewal must be applied for prior to the expiration date stated in the original Decision and Order, however the Board of Appeals hearing need not occur prior to that expiration. The expiration date of the original decision and order is therefore extended until the renewal application is ruled upon.

VIII. NOTICE TO THE PUBLIC.

A. Not less than 14 days prior to the hearing, the Applicant or the Applicant's agent shall mail a notice provided by the clerk to the Board of Appeals by Certified Mail, Return Receipt Requested, to all adjoining and confronting property owners of the time, date, place, and nature of the public hearing. The Applicant shall file, with the Zoning Officer, an affidavit of mailing of such notice as an exhibit in the public hearing prior to 4:30 p.m. of the day of the hearing and in no case after the commencement of the hearing.

B. At least 14 days prior to the hearing, the Applicant shall erect a sign(s) provided by the Zoning Officer on the subject property. Such sign(s) will be erected

within 10 feet of the boundary line of such land which abuts every public road and, if the property does not abut a public road, the sign must be posted at the nearest public road which provides access to the property. The sign(s) shall be affixed to a rigid board and be maintained by the Applicant until a written decision and order is issued by the Board. The sign will contain a bold notice that it is a misdemeanor for anyone to tamper with such a sign during the period it is required to be posted.

The Applicant shall file, with the Zoning Officer, an affidavit certifying the posting of said sign(s) as an exhibit in the public hearing prior to 4:30 p.m. of the day of the hearing and in no case after the commencement of the hearing.

C. In the case of a special exception; enlargement, extension, or modification of a Special Exception use; variance; or extension or enlargement of any non-conforming situation; appeal; and reconsideration requesting the Board to consider additional evidence, notice of the time and place of the public hearing, together with a summary of the proposed request, shall be published in at least one (1) newspaper of general circulation in the jurisdiction once each week for two successive weeks, with the first such publication of notice appearing at least 15 days prior to the hearing.

D. The responsibility of assuring compliance with the advertising, posting and mailing requirements of this section shall be on the Applicant. Should a dispute arise as to whether there has been compliance with the advertising, posting, or mailing requirements of this section, it shall be the Applicant's burden to establish the compliance. If the Board determines that the Applicant has made a good faith effort to comply with the requirements of this section, the Applicant shall be afforded

a reasonable opportunity to correct the non-compliance. If the Board determines that the Applicant has not made a good faith effort to comply with the requirements of this section, the Board may dismiss the Petition.

E. None of the notice requirements contained in this Section will be applicable to or required for hearings on administrative appeals from notices of violation of county laws and regulations, including the issuance of stop work orders or cease and desist orders.

IX. FEES.

A. A filing fee will be charged for the Board's processing of any Appeal; special exception; enlargement, extension or modification of a special exception; variance; or extension or enlargement of any non-conforming situation.

B. The appropriate filing fee will be established in the "Schedule of Fees and Charges" adopted by the County Commissioners.

Fees will be paid by the Applicant at the time any application, petition or Appeal is submitted. All checks should be made payable to the "County Commissioners of Charles County, Maryland." in all cases, the Applicant will be liable for the payment of all fees once the application has been processed and distributed for review by individuals and agencies.

X. ADMINISTRATIVE APPEALS. Appeals from any final order or decision of an Administrative official may be taken to the Board by any person aggrieved. Generally, a person aggrieved by an administrative decision is one whose personal or property rights are adversely affected by the decision or an adjoining, confronting or nearby owner is deemed, to be specially damaged and, therefore, a person

aggrieved. A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved. An Appeal is taken by filing a written notice of Appeal with the Zoning Officer and the Board specifying the grounds therefore, within thirty (30) days after the date of the administrative decision from which Appeal is taken, unless the ordinance applying to the agency from which Appeal is taken specifies a different time. In the case of Planning Commission Decision Appeals, the mere filing of a request for reconsideration of a decision prescribed in the Planning Commission rules of procedure does not stay the 30 day time frame for filing an Appeals with the Board of Appeals. If the Planning Commission votes to reconsider the decision, then the appeal time will be taken from the dated granting or denial of the reconsideration. The date and time of filing shall be entered on the notice by the Zoning Officer.

Whenever an appeal is filed, the Zoning Officer will transmit to the Board the entire record relating to the action from which the appeal was taken.

An appeal stays all construction or activities that are the subject of a duly issued stop work order. An appeal stays all other actions by the Zoning Officer seeking enforcement of a compliance with the order or decision appealed from, unless the Zoning Officer certifies to the Board that a stay would cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board or a court, issued on application of the party seeking the stay, for due cause shown.

The Board may reverse or affirm in whole or in part, or may modify, the order, requirement, decision, or determination appealed from and may make any

order, requirement, decision, or determination, that in its opinion, ought to be made in the case before it. To this end, the Board shall have all the powers of the administrative official from whom the appeal was taken.

When an appeal is taken to the Board in accordance with this Section, the Zoning Officer will have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the Appellant, who shall then have the burden of persuasion on all questions of fact which are to be determined by the Board.

XI. CONTINUANCES AND RESCHEDULING OF HEARINGS. Those cases which have not be concluded may be continued to a day and time fixed by the Board, and it will not be necessary to re-advertise or re-post the property in matters related to zoning or re-advertise in other matters. The time and place of any continuance will be announced immediately prior to the suspension of the pending proceeding. In situations where a continuance has been granted for an indefinite period, it shall be necessary to re-advertise, and re-post the property and notify adjoining property owners in accordance with these regulations. Through the Clerk to the Board of Appeals, the Applicant has 14 days from the date on the tentative schedule letter to accept or decline and request a new tentative date. If the Applicant does not respond in the allotted time the Clerk will assume the Applicant has accepted. Once the tentatively scheduled date has been accepted, the Chairman may grant the request for rescheduling depending on the Board's caseload and the effect on the scheduling of other cases. After the formal public

notice process has begun, the Applicant must formally request a continuance and pay the filing fee adopted by the Charles County Commissioners in the schedule of fees.

XII. EVIDENCE. The Board will conduct hearings in a manner best calculated to afford all parties an opportunity to present their positions and to serve the ends of justice and fairness.

Any evidence which would be admissible under the rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the Board of Appeals.

The Board will not be bound by the technical rules of evidence but will apply such rules to the end that probative evidence may be conveniently adduced. The Board may exclude immaterial or unduly repetitious evidence, and may limit the number of witnesses when testimony is cumulative in nature.

The Board will not recognize or qualify "expert witnesses" but will hear witnesses and give weight to their testimony as the Board deems appropriate to the knowledge of the witness. Nothing contained in this Rule is intended to prohibit any person from expressing an opinion on any matter about which he or she may testify.

All public records, previous Board of Appeals cases, public and local laws and regulations of Charles County which pertain to the particular case may be received by reference by the Board for its consideration.

XIII. APPEARANCE(S) BEFORE THE BOARD OF APPEALS.

A. Any individual who is a party to a proceeding before the Board may appear in his/her own behalf. Any member of a partnership may appear as

representing said partnership, if it is a party. A duly authorized representative of a corporation, trust, or an association may appear as representing said body, if it is a party. A duly authorized representative or an employee of any political subdivision or body or department may appear to represent the same in any proceedings before the Board.

B. Any party may be represented in any proceeding by an attorney at law admitted to practice before the Court of Appeals of Maryland.

XIV. ZONING OFFICER'S REPORTS.

The Board or the Applicant may request the presence at the hearing of the author of the Zoning Officer's report required under Section 297-415 (f) of the Zoning Ordinance by advance written notice filed with the Clerk to the Board.

XV. APPEARANCE AND TESTIMONY BY REPRESENTATIVE OF CIVIC OR IMPROVEMENT ASSOCIATIONS.

A. Before any person may testify on behalf of any civic or citizens association, he/she must state the number of members in the association and the geographical limits of the association.

B. Before any such person may testify as a representative it must be shown that he/she is authorized to speak for and present the views of the civic or improvement association.

C. Such authorization may consist of presenting at the hearing, or prior thereto, a resolution duly adopted by the Association, signed by the president or attested by the secretary.

XVI. CONDUCT OF BOARD OF APPEALS HEARINGS WHERE BOARD ACTS PURSUANT TO ITS ORIGINAL JURISDICTION.

A. OATH. All persons testifying, making statements or asking questions, shall be required to give his/her name and address and take the following oath given by the Chairperson or the Clerk to the Board:

"Do you declare and affirm under the penalty of perjury that the testimony you are about to give is the truth?"

B. ORDER OF PRESENTATION.

1. Introduction of the agenda item pertaining to the case by the Chairman.
2. Planning & Growth Management staff presentation including:
 - a. A brief summary of the Applicant's request.
 - b. Presentation of maps illustrating the general location of the subject property, zoning and pertinent graphics, illustrations as needed.
 - c. Staff summary and recommendations to the Board for consideration.
3. Applicant's presentation:
 - a. Summary of the request and supporting evidence or justification.
 - b. Direct examination of witnesses
 - c. Cross examination of witnesses by Board Members and by the Opposition. Normally, the cross-examination will be conducted by the Opposition or a spokesperson, but any person desiring to question the Applicant's witness must first address the

Chairperson, and when recognized, request leave of the Chairperson to ask questions of the witness, and he/she may not proceed until such leave is granted.

Upon initial recognition by the Chairperson, the person questioning will give the following information before questioning the witness:

- 1) Name.
- 2) Home address and, if appropriate, its approximate location with reference to the subject property.

Questions shall pertain only to statements made by the witness and shall be interrogatory in nature and not argumentative. Questions or statements, and they may not contain allusion to personality or motives. The Chairperson may rule on the suitability of a question, and in the discretion of the Chairperson, questions or cross-examination may be reduced to writing and asked by the legal advisor attending the Board or any other individual designated by the Chairperson.

The Chairperson may impose reasonable limitation upon cross-examination:

- Re-direct examination of Applicant's witnesses.
 - Re-cross examination of Applicant's witnesses.
4. Opposition's presentation:
- Direct examination of Opposition's witnesses.
 - Cross examination of Opposition's witness by Applicant and by any Board Members.
 - Re-direct examination of Opposition's witnesses.
 - Re-cross examination of Opposition's witnesses

5. Rebuttal by the Applicant. The Applicant may present evidence to rebut any evidence introduced by the Opposition. No new evidence unrelated to Opposition's presentation may be introduced at this time.

6. Summation by Opposition.

7. Summation by Applicant.

8. Board's action. The Board of Appeals may grant or deny the application at the end of the presentation, stating its findings of fact and conclusion of law, or it may take the case under advisement for further deliberation and later decision.

The Chairperson may place reasonable limitations upon testimony, such as three (3) minutes for individuals and five (5) minutes for persons representing a group or organization, provided the record is kept open for a reasonable time in order to allow written testimony to be submitted.

For proper reasons shown, the Board may recess the case to receive additional evidence at a later time if the Board deems it essential in making the proper decision. The Board may not consider any additional evidence from either side after the hearing is concluded; however, the Board may receive legal memoranda summarizing the presentations of the Applicant or Opposition upon approval of a request made in open session.

The Applicant, a Board member, or any interested party may request the presence at the hearing of the Staff person who prepared and signed the Technical Staff Report, provided the request is submitted in writing to the Clerk to the Board of Appeals at least five (5) business days prior to the scheduled hearing.

C. BURDEN OF PROOF. The burden of proof is one of a preponderance of the evidence, and it is on the Applicant to show, by competent, material and substantial evidence, that the request meets all prescribed and required standards and that the use would be conducted without detriment to the neighborhood or public interest.

D. TIME LIMITATIONS. The Chairperson may announce, at the beginning of each hearing, a limitation on the amount of time allowed for testimony.

XVII. CONDUCT OF ADMINISTRATIVE APPEAL HEARINGS.

A. MANNER OF HEARING APPEALS.

The hearing of appeals from the decision of an agency or official shall either be DE NOVO or on the record. If the decision from which the appeal was taken was determined after a process or proceeding was conducted during which all necessary evidence, whether by testimony or documentation, required to reach that decision was presented or submitted to the agency or official, such that a record of that process or proceeding may be presented to the Board of Appeals, then that appeal shall be heard on the record. Additionally, if the agency or official and the Appellant stipulate to the Board by agreement such documentation (which may include proffered testimony) as to sufficiently constitute a record of those items considered by the agency or official in making the decision from which the appeal is taken, then the appeal may be heard on the record. All other appeals shall be heard DE NOVO by the Board of Appeals.

B. DE NOVO APPEALS.

1. The conduct of DE NOVO appeals hearings shall be the same

as for the Board of Appeals hearings where the Board acts pursuant to its original jurisdiction, as set forth in Section XV, A and B.

2. Burden of Proof.

a. In administrative appeals from notices of violation of county laws and regulations, including the issuance of a cease and desist order, the burden of proof is one of a preponderance of the evidence and shall rest on the party who has to prove the affirmative of an issue necessary to establish the party's cause of action or defense. The affirmative of an issue shall mean those facts and points of law which a statutory provision or the common law requires be proven in order to support a requested action or defense.

b. In all other DE NOVO appeals, the burden of proof shall be on the Petitioner/Appellant to show that the action taken by the administrative agency was clearly erroneous, illegal, unconstitutional, or arbitrary and capricious.

C. APPEALS ON THE RECORD.

1. Order of presenting cases where the appeal is on the record.

In an appeal on the record from an action of an administrative agency, the Petitioner/Appellant shall, within ten (10) days of filing of such appeal, file in the proceedings, and serve upon the administrative agency, a memorandum setting forth a concise statement of all points on which the appeal is based, with an argument, including the following, in support of each point:

- a. Points of law;
- b. References to legal authority;
- c. Page citations of particular portions of the record

transcript; and

- d. Exhibits by number.

Within ten (10) days after the filing of the memorandum by the Petitioner, the administrative agency shall file a reply memorandum in the same form. The Board will entertain oral arguments based on the record; and for good cause shown, additional evidence may be received. Order of presentation shall be as follows:

- a. Presentation of report and decision of county agency;
- b. Presentation by Petitioner/Appellant;
- c. Presentation by Opposition; and
- d. Decision of the Board.

2. Burden of Proof.

The burden of proof is on the Petitioner/Appellant to show that the action taken by the administrative agency was clearly erroneous, illegal, unconstitutional, or arbitrary and capricious.

XVIII. DECISION AND ORDER.

A. The final Order of the Board granting or denying an application shall be in writing, signed by the Members, attested by the Clerk, accompanied by written findings of fact and conclusions of law. The Decision and Order shall be made a part of the record of proceedings and shall be filed with the Office of Planning and Growth Management and maintained as part of the official records of the County. Each case shall be decided, and the final decision and order shall be issued not later than sixty (60) days from the close of the last public hearing, unless such time is extended by an official resolution adopted by the Board.

B. Upon receipt of the Board's final decision and order in any case, the Clerk shall cause copies thereof to be made and mailed to the Applicant, all parties of interest who appeared or testified during the hearing and who provide their

names and addresses and all other persons who make a request for a copy thereof.

XIX. QUORUM AND VOTE REQUIREMENT.

A majority of the Board of Appeals shall constitute a quorum. The vote of a majority of the Board members present is required for valid action by the Board. In a hearing attended by less than five (5) Board Members, and where a tie vote is reached, the absent Board Member shall listen to the record of the case within fifteen (15) days, after which the full Board shall reconvene for further discussion and final vote. The absent Board Member shall certify in writing, filed in the case, that he/she listened to the tape of the proceeding.

XX. REVISORY POWER OF THE BOARD.

A. On the Board's own motion, or at the written request of any party made within fifteen (15) days of the date of the Board's written decision and order or, for good cause shown, the Board, on an affirmative vote of three (3) members, may suspend its decision and re-open the case for the purpose of reconsideration, modification, and/or rehearing of any issues raised in the motion for reconsideration. The party filing such a motion shall transmit copies to the Applicant and all persons who testified at the hearing and shall file an affidavit of mailing with the Zoning Officer. In the event of extraordinary circumstances which prevent the party from filing the request for reconsideration within fifteen (15) days, the Board may, on an affirmative vote of three (3) members, accept the motion after the fifteen (15) day period, but in no event later than thirty (30) days from the date of the written decision and order.

For the purpose of correcting a clerical error the Board may, at any time by resolution, without prior notice or hearing, modify its decision without suspending it, and in such case shall send a copy of the corrected decision to each recipient of the original decision.

After the expiration of thirty (30) days, the Board shall retain power to revise its decision or, without suspending its decision, to modify conditions established in case of fraud, mistake or irregularity.

All such revisory actions shall require the affirmative vote of three members. The time for appeal to the Circuit Court is not affected by a request for reconsideration, modification, or rehearing unless the Board, by required vote, modifies, suspends, or withdraws its decision and order.

B. Grounds for reconsideration, modification or rehearing:

1. Reconsideration or modification shall be granted only upon a showing of mistake of fact or law, or to correct clerical error.

2. No request for a rehearing shall be granted unless evidence of changed circumstances or new evidence is submitted which could not reasonably have been presented at the original hearing, or unless some mistake or misrepresentation was made at the original hearing which requires rehearing and re-argument in order to be corrected.

C. Any request for reconsideration, modification, or rehearing shall be served by the party requesting such reconsideration, modification or rehearing on all parties entitled to receive notice in the case.

D. Any party may, within fifteen (15) days of the date of filing a request

for reconsideration, modification or rehearing, file a written response to such request.

XXI. APPEALS TO THE COURTS.

All final, written decisions of the Board except as stated in Section [418] 297-417 of the Charles County Zoning Ordinance shall be subject to review by the Circuit Court for Charles County upon an appeal filed pursuant to the Maryland Rules of Procedure by any party aggrieved by a decision, within the time prescribed for appeals from administrative agencies by such rules of procedure. [See Section 418 for a Special Exception for surface mining, asphalt plants or sand and gravel washing, crushing or screening.]


XXII. RULES NOT JURISDICTIONAL.

These Rules of Procedure do not constitute jurisdictional requirement. Failure of the Board, its staff, or any party to comply with any provisions of these Rules of Procedure shall not invalidate any otherwise valid decision or action of the Board.

AND, BE IT FURTHER RESOLVED THAT, this Resolution shall take effect on the 10th Day of Nov, 2009.


BOARD OF APPEALS OF
CHARLES COUNTY, MARYLAND


FREDERICK R. MOWER, CHAIRMAN


LUKE HANNAH, VICE CHAIRMAN


KENNETH W. CROSS


JOHN PEARL YATES


KENNETH NEIL ROBINSON, ALTERNATE